

1 beneficiaries, the viewing public which it serves.

2
3 **3. Plaintiffs Will Suffer Irreparable Harm If A**
4 **Temporary Restraining Order And A**
5 **Preliminary Injunction Is/Are**
6 **Not Granted**

7 Plaintiffs will suffer irreparable harm if a preliminary injunction does not issue (as
8 described in full detail in the Pappas Declaration, Paragraphs 21-22, Pages 13-17,
9 inclusive). Appearance on television is crucial to universities, such as FSU, with
10 prominent football programs, and the damage from the loss of the benefits of such
11 exposure cannot be measured by money damages. Additionally, the public interest will
12 be irreparably damaged if at least 200,000 to 250,000 KMPH viewers and FSU Bulldog
13 fans are deprived of the opportunity of watching these two games. Further, taxpayers,
14 such as Plaintiff Harry J. Pappas, who have contributed thousands of dollars to FSU, and
15 who provide additional support to the university through their tax dollars, will suffer
16 irreparably in that the institution which they have financially supported will suffer the
17 detriment as set forth above. Finally, KMPH will suffer an irreparable damage to the
18 franchise value of the station.

19 Courts considering anti-trust issues relating to similar facts have pointed out the
20 irreparable nature of the injury caused to an institution that, for whatever reason, loses
21 the ability to compete on national television. In Justice v. National Collegiate Athletic
22 Association, 577 F.Supp. 356 (D. Ariz. 1983), student athletes at the University of
23 Arizona protested sanctions imposed on that school's football program by the NCAA.
24 Those sanctions included a prohibition against appearing in televised football games. In
25 discussing sanctions, the Court noted that the sanctions would "depriv[e] [the university]
26 of substantial revenues from lost television contracts [and that] the sanctions carry with
27 them a stigma and loss of prestige in the academic community that are of no small
28 event." Id. at 372.

4. The Balance of Hardships Tip Apply In
Favor of Plaintiffs

Plaintiffs have established the incalculable harm which they will suffer if KMPH is not allowed to televise the FSU versus UOP game on November 9, 1991, and the FSU versus SJSU game on November 23, 1991. Defendants, on the other hand, will not suffer if they are enjoined from enforcing their unlawful agreements.

The Big West has already received the compensation it will receive for the 1991 conference football schedule from SportsChannel. The compensation will be no more, and no less if KMPH is also allowed to televise the games to its viewers. The Big West will also not suffer a diminution in the value of its television or cable package by reason of KMPH competition, since FSU will leave the conference next year and KMPH will then broadcast FSU games in conjunction with the television and cable packages of the WAC. Defendant Marketing will suffer no detriment, insofar as its compensation is dependent upon the price it negotiates with vendors such as SportsChannel for the television and/or cable carriage rights of conference athletic events. With respect to football in 1991, Marketing has already conveyed the cable carriage rights to SportsChannel for an agreed-upon consideration which will be unaffected by a telecast over the KMPH airwaves. Likewise, SportsChannel will suffer no detriment insofar as it has already agreed to pay the stipulated price for the cable rights it purchased for the 1991 Big West football schedule.

Defendants cannot deliver these two (2) games to 50% (approximately 200,000 to 250,000 viewers) within the television ADI of KMPH--viewers who have previously demonstrated that they are FSU fans. Notwithstanding their inability to serve the needs of these viewers, Defendants want to make sure that no other medium is able to serve these viewers. The only hardship Defendants will face is the competition from KMPH and its ability to telecast these games. That "hardship" is one which the anti-trust laws are designed to promote.

At most, SportsChannel may argue that its advertisers have paid for

1 SportsChannel's exclusive right to broadcast these games. Such a contention must be
2 viewed skeptically. Until October 24, 1991, SportsChannel was incapable of carrying
3 these games into any portion of the KMPH, ADI. Moreover, it is unlikely that advertisers
4 have agreed to pay for the exclusive right to appear on SportsChannel's cable coverage
5 insofar as the pendency of this lawsuit was publicly announced before the agreement
6 whereby SportsChannel and Continental enabled SportsChannel to carry these two (2)
7 games into 50% of the ADI of KMPH.

8 FSU is in a unique position. The grant of a preliminary injunction will benefit
9 them. They, as well as other members of the conference, will realize all the benefits
10 described herein: alumni support, ability to attract student athletes and students, and
11 public support. Moreover, each of the schools will receive their share of the net receipts
12 from the UOP and SJSU games. In these respects, the issuance of a TRO and preliminary
13 injunction can do them nothing but good.

14 The only potential hardship to be suffered by FSU, UOP or SJSU is some sanction
15 imposed by the Defendants. Such harm would be caused by illegal conduct on the part
16 of the Defendants, however, and would be prohibited by the TRO and preliminary
17 injunction sought by Plaintiffs. Thus, the hardship that would be suffered by FSU is
18 nonexistent, and the benefit they would gain is enormous.

19

20

5. The Injunction Sought Is In The Public Interest

21 The public interest in favor of the preliminary injunction is overwhelming. As
22 noted previously, fan interest in these two (2) games is great. They are games featuring
23 potent offenses, which promise high-scoring games and further promise to decide the
24 conference championship. They are games among traditional and geographic rivals.
25 College football fans in the San Joaquin Valley want to see these games.

26 On June 27, 1984, the Supreme Court struck down the NCAA's plan for televising
27 college football as a violation of the anti-trust laws. In its opinion, the Court noted with
28 approval the District Court's finding that many more games would be televised in the free

1 market than under the NCAA plan. The Court also can the NCAA plan "unresponsive
2 to consumer preference." 468 U.S. 106. Yet the contracts between and among the Big
3 West, Marketing and SportsChannel perpetuate the problems inherent in the NCAA plan.
4 Defendants can point to no public interest in favor of denying the public opportunity to
5 view these games on television.

6
7 IV

8 CONCLUSION

9 Plaintiffs respectfully submit that they have met all of the requirements for
10 issuance of a TRO and a preliminary injunction and that a TRO should be entered in the
11 form submitted and a hearing on the Motion for Preliminary Injunction set as soon as
12 practicable.

13 DATED: October 28, 1991.

LAW OFFICES OF HERBERT HAFIF

14
15 By: 

16 Gary E. Chipe
17 Attorneys for Plaintiff
18 PAPPAS TELECASTING,
19 INCORPORATED and
20 HARRY J. PAPPAS
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DECLARATION OF LEBON ABERCROMBIE

I, LeBon Abercrombie, declare:

1. I am the Senior Executive Vice President/General Manager and a member of the Board of Directors of Pappas Telecasting Incorporated ("Pappas"), licensee of commercial television broadcast station, KMPH TV Channel 26 (hereinafter "KMPH"). KMPH broadcasts free, over-the-air television service to the cities of Fresno, Visalia, Bakersfield and other smaller cities and rural areas in the San Joaquin Valley of California.

2. In 1965 I graduated from Stanford University with a Bachelor of Arts degree, and in 1972 I graduated from the Harvard School of Business Administration where I was awarded an MBA degree. I served five years in the United States Navy achieving the rank of lieutenant and my service included tours aboard the aircraft carrier U.S.S. Coral Sea. I joined Pappas in 1979. I reside in Visalia, California with my wife and two children.

3. As General Manager of KMPH I have the responsibility for the daily operation and management of KMPH including oversight of programming, promotion, sales, marketing, finance,

community relations and government relations; at the corporate level my responsibilities include analysis and acquisition of facilities and equipment and overall responsibility for new project planning.

4. At both the corporate and station level a conscious decision has been made to develop the franchise of KMPH by identifying KMPH as the community television station serving the San Joaquin Valley. We refer to KMPH in our promotional activities as "We're your station". The use of this phrase is a sincere expression of the station's dedication to providing television consistent with the mores and cultural diversity of our service area. We are mindful of our obligation to our viewers and have, therefore, refused to televise programs which our viewers have let us know were inconsistent with their cultural and moral values. We take seriously our obligation to provide not only entertainment, but also community affairs broadcasting which reflects the diversity of the San Joaquin Valley.

5. A critical building block to establish KMPH as "We're your station" has been KMPH's close identification with Fresno State University ("FSU"). For over ten years KMPH has broadcast both home and away FSU athletic events to its viewers. Only

1 recently has that become profitable. For many years the station
2 subsidized the broadcast of FSU athletic events not only to help
3 identify KMPH as "We're your station" but also to provide a
4 community service to its viewers in a community where FSU looms
5 large as the cultural and entertainment center of the San
6 Joaquin Valley. KMPH takes seriously not only its objective to
7 be profitable, but also its promise to provide community service
8 and responsible television broadcasting.

9
10 6. Our association with FSU is by no means purely
11 altruistic. In fact, approximately 5.5% of our gross revenues
12 for 1990 were attributable to televising FSU football and
13 basketball games. If we were unable to continue our
14 relationship with FSU our net operating cash profit, based upon
15 1990 figures, would be reduced by as much as 18%.

16
17 7. Recently we have been celebrating 20 years of
18 continuous operation and service to the San Joaquin Valley.
19 Prominently featured in the promotional spots aired over KMPH
20 during the last few weeks is our relationship with FSU and
21 specifically FSU athletics. FSU athletic events are among the
22 most important entertainment events in the San Joaquin Valley.
23 Our association with FSU and its nationally recognized athletic
24 program is important to KMPH as a critical building block of the

1 franchise value of the station, far beyond the numerical
2 contributions to revenue and profit. Our association with FSU
3 is of equal importance to our viewers. For many of our viewers
4 free television is their sole source of affordable
5 entertainment. KMPH, for many, is the only way to watch the
6 exploits of Fresno State Bulldogs.

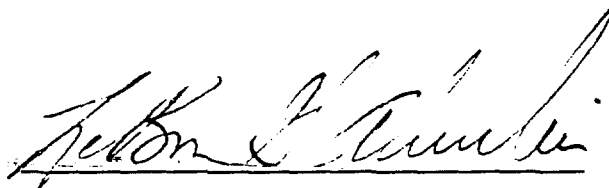
7
8 8. As we do annually, in 1990 we reevaluated our
9 association with FSU. We concluded that this association was
10 vital to the success of KMPH. As a result, I negotiated on
11 behalf of KMPH an extension of our television broadcasting
12 agreement with FSU. Pursuant to prior agreements, our contract
13 was scheduled to expire on June 30, 1991. Therefore, in
14 February and March, 1991 I negotiated with Scott Johnson of FSU
15 an extension of the Television Broadcast Agreement entered into
16 on July 1, 1985 (Exhibit "A" hereto). A true and accurate copy
17 of the extension and continuation of our Television Broadcast
18 Agreement has been identified as Exhibit "D" to the Declaration
19 of Scott Johnson and is incorporated herein by reference.

20
21 9. As part of our continuing obligation to attempt to
22 fulfill our contractual obligations to FSU and our advertisers,
23 I personally contacted Bob Lee, Director of Athletics at the
24 University of Pacific, for the purpose of seeking UOP's approval

1 of KMPH broadcasting the FSU versus UOP away game back to our
2 television market. Attached hereto as Exhibit "E" is a true and
3 correct copy of a letter dated October 11, 1991 from Mr. Lee
4 addressed to your declarant. In that letter Mr. Lee expresses
5 his willingness to have KMPH Broadcast the game back to its
6 market.

7
8 10. That each and every of the foregoing facts are known of
9 me of my own personal acknowledge and I could and would
10 competently testify thereto if called as a witness herein.

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12 Executed under penalty of perjury this 23rd day of October,
13 1991 in Visalia, California

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16 LeBon G. Abercrombie

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1 over the previous sixteen (16) years, that we began operations
2 in 1971.

3 2. I am a member of the Board of Governors of the Valley
4 Children's Hospital Foundation. I am a member of the Board of
5 Directors of the Television Bureau of Advertising, Inc.
6 ("TvB"). I previously was a member of the Board of Directors
7 of the Association of Independent Television Stations of
8 America ("INTV"). I was elected and re-elected for the
9 maximum term allowed by the by-laws of INTV. I am currently a
10 member of the Board of Directors of the National Association
11 of Broadcasters ("NAB"). I was a member of the Board of
12 Management which founded KMTF, Channel 18 (now KVPT), the PBS
13 station which serves the Central Valley. I have personally
14 donated over \$75,000 to Fresno State University ("FSU").

15 3. When KMPH-TV was founded on October 11, 1971, I was
16 the station's General Manager. I was and remain intimately
17 involved in all phases of development of the station:
18 research; planning; analysis of technical equipment needs;
19 building design; equipment purchase negotiations; programming;
20 promotion; sales and management of the financial affairs of
21 the company. In 1979, however, I turned over the daily
22 management and operation of KMPH to others. In 1987 LeBon G.
23 Abercrombie became General Manager of KMPH.

24 4. The association between KMPH and Fresno State
25 University has been a long one. For over ten years KMPH has
26 been televising FSU athletic events. During the early years

of our relationship it was not profitable to us. In fact, viewed from a short-term perspective, televising FSU athletic events was a consistent drag on our earnings. For example, during the 1985-1986 season, KMPH lost approximately \$300,000 televising Fresno State athletic events. However, I do not take a short-term view. When we began operating in 1971, it was our intention to develop KMPH into a "community station" dedicated not only to profit, but also to serving the San Joaquin Valley viewers of KMPH. It has been my experience in television and radio broadcasting that if our stations responsibly provide programming most responsive to the tastes, needs and interests of our viewers and listeners, and if we prudently manage our business with the assistance of capable colleagues, over the long run profits will take care of themselves.

5. My dedication to community television is not by accident. I grew up in a family where only Greek was spoken in the home. Television was, for me, the greatest tool for my assimilation into this society. For example, television reenforced the English I was taught in school. I learned idiomatic expression from television. In addition, I was able to observe and understand the etiquette of social interaction prevalent in American society. Even its detractors acknowledge that commercial television is a reflection of the mores and cultural diversity of our society. When responsibly guided, it is a powerful unifying vehicle which brings

1 together the disparate, multi-cultural elements of our society
2 so that they gain common exposure to public issues, sports and
3 entertainment programming. Who can forget a nation riveted to
4 their seats during the recent confirmation hearings of Supreme
5 Court Justice Clarence Thomas.

6 6. By contrast, for many, both in the San Joaquin Valley
7 and across the nation, basic cable television service is
8 unaffordable and the premium cable tiers on which movies,
9 specialized broadcasting and, increasingly, sports are carried
10 are an unattainable luxury. For rural residents cable service
11 is unavailable at any price. For those who cannot afford, or
12 who do not have access to cable television, free, over the
13 air, television (like KMPH) is their window on the world.
14 Whether rich or poor, rural or urban, white collar or blue
15 collar, the only ubiquitous communication medium in America is
16 free, over the air, television.

17 7. Since the cable television industry was deregulated
18 in 1984, cable television companies operate as unregulated
19 monopolies in the communities they are intended to serve.
20 There is one cable company per community. Across the nation
21 there are approximately ten (10) entities which control
22 approximately fifty eight percent (58%) of the local cable
23 service to those homes receiving cable service. The cable
24 television company for most of the market area of KMPH (the
25 so-called area of dominant influence ("ADI")) is Continental
26 Cablevision ("Continental") which is the third largest cable

1 company in America. Nevertheless, only forty nine percent
2 (49%) of the homes in our ADI subscribe to cable service.
3 This contrasts with eight (8) separately owned commercial
4 television stations in the Fresno market alone which serve
5 approximately 98% of the households.

6 8. Like all other cable television carriers Continental
7 can, free of charge, retransmit the signal of KMPH without
8 seeking the permission of KMPH.

9 9. SportsChannel America is a national, premium-tier,
10 sports, cable carriage network which offers National Hockey
11 League games and also acts as a distributor of other sports
12 programming to regional SportsChannel services. In most of
13 the large communities and populous regions of the United
14 States, there are regional SportsChannel services. For
15 example, SportsChannel Chicago, SportsChannel Florida,
16 SportsChannel New England, SportsChannel New York,
17 SportsChannel Bay Area and SportsChannel Los Angeles.
18 SportsChannel America and each of the regional SportsChannel
19 services are jointly owned by Cablevision Systems Corporation
20 (or its affiliates) and the National Broadcasting Company
21 ("NBC"). NBC is a wholly owned subsidiary of the General
22 Electric Company, Inc. ("GE"). I am informed and believe and
23 thereupon state that John Moore is the President of
24 SportsChannel America, who reports to Tom Rogers, President of
25 NBC Cable. Mr. Rogers reports directly to Robert Wright,

1 President/CEO of NBC, who in turn reports directly to John
2 Welch, Chairman of the Board of GE and NBC.

3 10. KMPH, per its contract with FSU, was originally
4 scheduled to broadcast four away and two home football games
5 between FSU and its opponents. Attached hereto as Exhibit "F"
6 is a true and accurate copy of the KMPH/Fresno State
7 University football schedule. The games which were originally
8 scheduled to be televised are indicated by an asterisk to the
9 left of the date and further identified in the column under
10 the heading "*Televised". Based upon this schedule we sold
11 advertising to our advertisers. To many of our advertisers,
12 the most attractive games were the two away games against PAC
13 10 opponents, Washington State University (September 14, 1991)
14 and Oregon State University (September 21, 1991). Although we
15 received permission from the athletic directors of both
16 Washington State and Oregon State to broadcast these games,
17 they withdrew that approval when Prime Ticket, another
18 national, premium-tier, sports, cable carriage network,
19 enforced what it purported to be an exclusive blackout
20 provision in its contract with the PAC 10. Prime Ticket did
21 so despite the fact that it had no intention of distributing
22 those games via cable carriage into the ADI of KMPH, or
23 anywhere else. Therefore, those games were not seen by the
24 approximately 400,000 to 500,000 viewers who would have seen
25 them for free were KMPH to have broadcast them.

11. When the Washington State and Oregon State games were removed from the television schedule at the last minute, KMPH and FSU discussed the need for replacement games. Two alternative game packages were offered to KMPH by FSU. The first involved KMPH televising the University of Pacific ("UOP") away game on November 9, 1991 and the San Jose State home game on November 23, 1991. FSU expressed a preference for this two-game package, because this package would not have an adverse impact on its home gate receipts, since the UOP game is an away game and the San Jose State game is likely to be a sellout. We believe that these two games are of much greater interest to our viewers and, therefore, are of much greater value to our advertisers. As a result, we concluded that this was a vastly superior package when compared to the alternative package. The other package included two home games against Long Beach State on October 12, 1991 and Cal State Fullerton on November 16, 1991. We believed that these games would not be as attractive to our viewers and thus of less value to our advertisers. We were also quite mindful of the potential negative impact on FSU's home gate receipts. Further, because of the last-minute cancellation of the Washington State and Oregon State telecasts and the confusion associated with trying to replace those games on the television schedule, we did not believe we could adequately promote the Long Beach State telecast on such short notice. Therefore, we focused our attention on the games between FSU,

1 UOP and San Jose State. We were advised by FSU that
2 SportsChannel asserted a primary right to cable carriage of
3 these games as a result of an arrangement they had with
4 Creative Sports Marketing, which in turn had contracted with
5 the Big West Conference to put together national and regional
6 cable network carriage packages.

7 12. Because SportsChannel does not have a carriage
8 contract with Continental Cablevision, unless KMPH is able to
9 televise the UOP and San Jose State games, those games will
10 not be seen at all within the ADI of KMPH. Approximately
11 400,000 to 500,000 Valley residents (200,000 to 250,000 per
12 game) will be deprived of the opportunity to see those games.
13 According to Arbitron, the away game with winless New Mexico
14 State which was televised by KMPH on Saturday afternoon,
15 October 19, 1991 received a 33% share (nearly 200,000 persons
16 viewing in the entire Valley). One out of every three people
17 watching television within our ADI and during the rating
18 period was watching the Bulldogs on KMPH.

19 13. The San Joaquin Valley viewers within the KMPH ADI
20 will miss the opportunity to watch the UOP and San Jose games
21 because of the predatory practices of SportsChannel. Because
22 the Big West Conference has wrongfully asserted
23 SportsChannel's right of primacy, with respect to the telecast
24 or cable carriage of these two games (notwithstanding a pre-
25 existing contract between KMPH and FSU), and because Gary
26 Cunningham, Athletic Director of Fresno State University had

1 previously advised me, and again in a conversation on October
2 10, 1991, that FSU is afraid of reprisals from the Big West,
3 SportsChannel, and possibly others, I attempted to negotiate
4 with SportsChannel America in order to avoid a dispute over
5 who had the primary rights to these two games.

6 14. We had, on previous occasions, cooperatively produced
7 FSU football and basketball broadcasts via a "split feed",
8 whereby we had telecast FSU football and basketball games
9 exclusively within our ADI and SportsChannel provided the
10 games via cable carriage to areas outside our ADI. On October
11 3, 1991, I spoke by telephone with John Moore, President of
12 SportsChannel America. After exchanging pleasantries and
13 discussion of our respective positions, Mr. Moore said, "We
14 buy these rights to drive distribution". His meaning was
15 clear: SportsChannel would not agree to a split feed for
16 these games because the exclusive right to have these games
17 seen within the ADI of Channel 26 via the SportsChannel
18 network is a powerful inducement for Continental Cablevision
19 to finally agree to a carriage contract between Continental
20 Cablevision and SportsChannel - a contract that SportsChannel
21 has been aggressively seeking for some time and is pressing
22 for right now. Even if SportsChannel is successful in
23 persuading Continental to carry its service, only 49% of the
24 homes within our ADI have access to cable television. If
25 SportsChannel had not elected to enforce its purported
26 exclusivity provision, Continental Cablevision could show

1 these two football games by simply retransmitting the signal
2 of KMPH and would not have to pay SportsChannel or KMPH for
3 the right to carry these games.

4 15. I even offered to pay SportsChannel \$15,000 per game
5 to induce them to agree to a "split feed". I believed then
6 and I do now believe that such a payment was unwarranted
7 because we had already purchased the television rights from
8 FSU, but I concluded it would be less expensive than suing.
9 FSU is leaving the Big West after this season and will become
10 a member of the Western Athletic Conference ("WAC"). The WAC
11 does not have a contract with SportsChannel and, in any event,
12 protects the local television packages by coordinating
13 schedules and starting times. I advised Mr. Moore that if
14 SportsChannel would not agree to a split feed by close of
15 business on October 4, 1991, KMPH would have to pursue other
16 alternatives.

17 16. On October 7, 1991, I spoke with the area Vice
18 President of Continental Cablevision, Michael Morris, who told
19 me that, "We at Continental Cablevision do not think we should
20 have to buy from SportsChannel this premium cable service at a
21 price we believe is too high to pass on to our subscribers
22 just because SportsChannel paid astronomic prices for cable
23 rights to these games." I also thanked Mr. Morris for his
24 letter of October 2, 1991, attached hereto as Exhibit "G", in
25 which Mr. Morris, unaware that we had preexisting rights to
26 these games, nevertheless urged SportsChannel to agree to a

1 split-feed for the UOP and San Jose State games and assured
2 SportsChannel that such action would facilitate their
3 negotiations.

4 17. On Sunday, October 6, 1991, I spoke with Gary E.
5 Cripe of the Law Offices of Herbert Hafif. I told him that
6 SportsChannel had advised me on October 4, 1991, that they
7 would not cooperate on a "split feed" of the UOP and San Jose
8 State games. I asked to meet with him as soon as possible to
9 discuss available remedies. He advised me that he would be in
10 all day meetings in San Francisco on Monday, October 7, 1991,
11 and Tuesday, October 8, 1991, with the Department of Justice,
12 but would be willing to meet with me during the evening of
13 October 7, 1991. I flew to San Francisco and met with Mr.
14 Cripe from approximately 6:00 p.m. to 10:00 p.m. during which
15 meeting he advised me of potential remedies. He also advised
16 me that he would be unable to recommend which alternatives
17 were available to KMPH until he spoke with station personnel,
18 representatives of FSU and reviewed our files and
19 documentation. Therefore, on October 9, 1991, Mr. Cripe and I
20 spent all day (7:00 a.m. to 9:00 p.m.) meeting with KMPH
21 personnel and reviewing our files. He also met with Mr. Scott
22 Johnson of FSU. On October 10, 1991, I formally retained Mr.
23 Cripe and his firm.

24 18. Because of the conduct of SportsChannel, the Big West
25 Conference, and other defendants, these two games will not be

1 seen. For over ten (10) years KMPH has been televising these
2 games for free.

3 19. It is clear that the objective of SportsChannel is to
4 warehouse these athletic events, and siphon them from free
5 commercial television and use them as a carrot (or a club) to
6 induce local cable television companies to agree to carry the
7 SportsChannel network. If this siphoning is not stopped, we
8 will be a nation of television "haves" and "have nots". If
9 this practice is not stopped, only those who can afford cable
10 television, premium tiers and pay per view will be able to
11 watch sporting events which, heretofore, have been available
12 for free. If SportsChannel and Continental reach an agreement
13 and the games are carried on Continental, one out of two homes
14 within the ADI of KMPH will be able to view those games only
15 if they are willing to pay the installation charge of \$14.95,
16 the basic cable service fee of \$19.95 monthly and an unknown
17 monthly fee for the SportsChannel tier.

18 20. Extrapolating from the Arbitron ratings for the
19 October 19 game against New Mexico State, one of the lower
20 rated FSU football telecasts, approximately 66,000 households
21 watched the October 19 game. Assuming 50% of these households
22 have cable, the remaining 50%, or approximately 33,000
23 households which viewed that FSU game do not have cable.
24 Therefore, if just these approximately 33,000 households (out
25 of 230,000 homes which don't have cable) all signed up with
26 Continental, a minimum of \$1,155,000 in revenues would be

1 immediately generated for Continental and SportsChannel. This
2 is a minimum figure because we do not know what would be
3 charged for the SportsChannel tier. Subsequent, additional
4 monthly revenues would be a minimum of \$660,000. These
5 figures should be contrasted with the cost of viewing FSU
6 football and basketball games on KMPH - \$0.

7 21. If Defendants are allowed to continue their
8 course of concerted, unlawful, coercive, anti-competitive and
9 monopolizing actions, and succeed in preventing live
10 television coverage of the two (2) subject games, Plaintiffs
11 will suffer immediate, permanent and irreparable injury in
12 that:

13 (a.) KMPH has preexisting contractual rights
14 to televise the FSU football games between FSU and UOP and
15 San Jose State. KMPH contracted for those games, in part, to
16 effectuate its strategic decision to create a community
17 television station closely identified with FSU in order to
18 fulfill its dual role, mandated by the FCC, which is to
19 prudently operate the business of television broadcasting,
20 and to serve the needs, interests and desires of the
21 television public for whom the broadcast licensee is a public
22 trustee. In a free market, unaffected by Defendants'
23 unlawful and restrictive agreements, and responsive to
24 consumer preference, these games would be televised for free
25 within the ADI of KMPH, providing substantial television

1 exposure and additional benefits to the universities involved
2 and the consuming public as alleged above;

3 (b.) The value of the KMPH/FSU television
4 broadcasting Agreement will be substantially and unlawfully
5 diminished and the value of the Defendants' Agreements will be
6 substantially and unlawfully enhanced, both relatively and
7 absolutely. This will damage the ability of KMPH to compete
8 for and negotiate and enter into future television contracts,
9 and could subject KMPH to claims from FSU pursuant to its
10 contract with FSU and from advertisers pursuant to the
11 Agreements between KMPH and its advertisers;

12 (c.) FSU and the other participating
13 universities will be deprived of important opportunities to
14 showcase their universities on television, both by presenting
15 their football teams to the respective audiences and
16 presenting that audience with promotional announcements about
17 the important and varied educational, research, teaching and
18 public service functions performed by their universities;

19 (d.) The public will be denied an opportunity
20 to view football games involving traditional rivalries and the
21 game which will most likely decide the Big West Conference
22 Championship;

23 (e.) If Defendants are successful in preventing
24 the telecasting of football games into areas, and to
25 consumers, into which and to whom they do not have the ability
26 to provide the games, then the boycott of Plaintiffs' station

1 which does have the ability to reach these consumers will
2 render KMPH less able to compete with national and regional
3 cable networks and local cable monopolies which are
4 unregulated and already enjoy a competitive marketing
5 advantage because they receive revenues not only from
6 subscribers, but also from advertisers, operate as local
7 unregulated monopolies and do not have to carry the signal of
8 KMPH over their cable, but unilaterally may carry the KMPH
9 signal over their cable without the permission of, or
10 compensation to KMPH;

11 (f.) If free, over the air television stations
12 like KMPH are driven from the local television market,
13 football games of local interest will be televised, if at all,
14 only if it is one of the games selected by national or
15 regional cable organizations which are less informed and less
16 responsive to the needs, interests, and desires of the local
17 television consumers. Further, only those who have access to
18 and who can afford cable carriage and/or pay per view will be
19 able to view sporting events which heretofore were available
20 in their local television markets for free;

21 (g.) There is an established and recognized
22 correlation between local television exposure and successful
23 student and student athletic recruiting programs, successful
24 financial support programs, and successful negotiation of
25 future television contracts, which cannot be valued in
26 monetary terms. In fact, FSU prominently features its

1 relationship with KMPH in its recruiting films which are
2 produced, pursuant to FSU's contract with KMPH, by KMPH on
3 behalf of the University. If these local television packages
4 are made financially inviable, FSU, and the taxpayers who
5 support it, including Plaintiff Harry J. Pappas, will suffer
6 losses which cannot be compensated by money damages or by any
7 remedy at law;

8 (h.) KMPH has become the Number 1 UHF
9 independent television station in the nation because it does a
10 better job of identifying viewers' needs, desires and
11 interests and responsibly delivers television programming
12 responsive to those needs, desires and interests in
13 fulfillment of the FCC mandate. KMPH recognized, helped to
14 create, fostered and has nurtured a symbiotic relationship
15 between FSU and the television consumers of the San Joaquin
16 Valley. KMPH has helped, through its telecasting of FSU
17 athletic events, FSU grow in stature and prosper, and has
18 provided valuable and popular programming to its viewers, and
19 has established viewer loyalty by reason of its close
20 association with FSU. The same kind of viewer loyalty that
21 Pepsi Cola and Coca Cola spend hundreds of millions of dollars
22 to both achieve and maintain by reliance upon their close
23 identification with superstars such as Michael Jackson, Paula
24 Abdul, Magic Johnson and Michael Jordan. This viewer loyalty
25 is part and parcel of the franchise value which is difficult
26 to quantify and articulate in monetary terms. KMPH,